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THE ANCIENT RULE THAT BAGGAGE IS NOT SUCH UNLESS IT ACCOMPANIES A PASSENGER.

The Supreme Court of Alabama held that, where one purchases a passenger ticket and by it procures the checking of his baggage to the destination named in the ticket, it is not necessary that he go upon the same train or go upon the ticket at all for the baggage to be deemed baggage in the same sense as had he gone. Alabama G. S. R. Co. v. Knox, 63 So. 538.

In this case the baggage was lost and the railroad claimed that, as to a gratuitous bailee the evidence showed no liability, verdict should have been for defendant, because baggage is carried only in performance of a contract to carry the passenger to whom it belongs, or who is its bailee.

The court speaks of the persistent clinging by text writers to the ancient rule that, in order to fix liability upon a carrier for the loss or destruction of baggage, as a carrier of baggage, as distinguished from a carrier of freight, the owner must be a passenger and accompany his baggage.

It was said the old rule was upon the theory of the owner of baggage being able to keep his eye on it and point it out along the journey and when the check system and separate cars were not used, as in steamboat and stage-coach travel. It is said that now, the reason of the rule having ceased, the rule itself should cease—the passenger having really no opportunity to see his baggage at all and it not being a mere matter of grace now, as was probably the case formerly, for a passenger to have his baggage carried. Now it is said the purchase of a ticket gives a double right—one to have passenger carriage, and the other to have the baggage carried. Also it is said there is no possible way of the carrier being prejudiced by the ticket purchaser not accompanying his baggage.

It is admitted, however, that there is conflict even among modern cases on this subject and to our mind there are many reasons for the old rule surviving, and we believe there was as much of double right in the old contracts as in the new.

In the first place, we doubt whether the old rule originated in the thought of passengers on a journey watching their baggage. That might be fairly possible in stage coach travel, but in steamboat travel it would be as greatly out of the question as in railroad travel. In either case it would have been a singular plea for the carrier to make, that the passenger should have watched his baggage and notified the carrier that it was not on board. By the carrier's contract he engaged to put it on board, and carry it as it should be carried. The court's theory of the old rule seems founded more on fancy than on fact.

But there is another consideration the court overlooks. Rates for passenger travel presumes baggage as baggage. One cannot contract for its carriage by paying passenger rates, he and the carrier knowing that there is to be no carriage of the passenger, because it would be illegal to charge any other rate than that prescribed for freight. And even were it the same rate, one might not have the right to demand the fast service, which goes with passenger transportation, for the transportation of freight. This might constitute discrimination. May the purchaser of a ticket obtain by concealment what he would have no right to obtain openly?

Furthermore all regulation of common carriers goes upon the absolute necessity of both the carrier and the customer entering understandingly into their contracts of transportation. There is more the idea of a relation by the carrier to the public than ever before in the history of transportation. The least departure from this idea is condemned with more emphasis now than ever before. And the least infraction is presumptively a serious offense.

It would seem, therefore, that this rigid idea excludes what regulation does not pro-

vide for, especially if the thing attempted to be done may seem to be covered by a particular regulation. Is not the carrying of baggage provided for by a particular regulation? And is it not carefully differentiated from freight?

This being true, is it any answer to say, that the carrier has no heavier burden on him when he does not really carry a passenger to whom the baggage belongs, than when he only carries his baggage? A customer is allowed to enter into a certain contract with a public agency. If he enters into one not prescribed, then he knows that he and the carrier are violating law. Does not the carrier therefore become, at most, but a gratuitous bailee?

We look at this under the view of what is public policy as to carriers, and this policy says, in effect, that baggage must be hauled as baggage and freight must be hauled as freight. When one tries to pay a passenger rate for something pretending to be baggage when it is not baggage, he pays and the carrier unlawfully receives a rate he is not allowed to charge. In other words it violates the statute, and the payee is conusant of the violation. It is easily to be seen, that allowing one to send articles in this way opens up a means of sending things not to be classed as baggage at all, and certainly it has been decided, that a railroad is not liable for what is not baggage, when properly it cannot be so classed, even where the passenger accompanies it. This may greatly proceed on the idea that thus he is avoiding paying freight, but under rate laws it is as bad to pay too much or too little freight as it is to pay no freight at all.

NOTES OF IMPORTANT DECISIONS.

COMITY—RECOVERY OF PENALTY IN ACTION FOR DEATH.—Connecticut Supreme Court of Errors holds that, while an action for death may be remedial, yet this is only so when recovery is based upon just compensation. When under statute authorizing action for death recovery is to be according to degree of culpability of defendant, then the action is for a penalty which a foreign court will not enforce, at least when this militates against the public policy of its state. Christilly v. Warner, 88 Atl. 711. To this holding there was a dissent by one member of the court.

The action in this case was begun by an administrator claiming under Massachusetts statute, which the Massachusetts court heid to be "remedial for the reason that a remedy is provided where before its enactment none existed. But the damages assessed are distinctly grounded upon the defendant's culpable misconduct, and are diminished or enhanced according to the degree of his delinquency."

A prior Massachusetts case said: "These acts gave a civil remedy for the recovery of a penalty imposed by way of punishment."

The Connecticut court said: "We have never allowed a recovery in a case of a negligent death upon any theory save that of just compensation. We have never penalized for such a wrong. To permit this to be done would be against our public policy, and comity does not require that we enforce the statute of a foreign jurisdiction which is so manifestly contrary to the public policy of our law."

The dissent claimed that the statute was not penal in the international sense, this only including penalties for public wrongs as distinguished from private wrongs, the view taken in Huntington v. Attrill, 146 U. S. 657, a leading case on this subject, decision among the states, however, being in conflict on the subject.

The dissent also claims that Connecticut policy is not entirely adverse to imposition of penalties in civil suits for a tort. Thus it says smart money is in addition to compensation and it is measured by circumstances of aggravation.

It would seem that the more intimate grows the intercourse of states the more ought such a refinement as the majority of the Connecticut court approves to disappear. It is certain that a Massachusetts judgment upon such a cause of action could be sued upon in Connecticut and by the faith and credit clause of our constitution all of our original states impliedly have said that state policy giving rights of action at home should have recognition abroad. There may remain a good reason for non-enforcement of criminal penalties abroad, because sister states have no such interrelations as that one should assist another in the enforcement of criminal law. Were that question, however, res integra, much might be said as to the non-applicability of international law between our states.

WHEN AN ACCIDENT ARISES "OUT OF AND IN THE COURSE OF THE EMPLOYMENT," WITHIN THE WORKMEN'S COMPENSATION LAWS.

By the terms of the Workmen's Compensation statutes of England, and most of the states of this country which have adopted such laws, it is not only necessary, to entitle a workman to compensation, that his injury be due to an accident, but the accident must be one "arising out of and in the course of" his employment. This accords with the general theory of these laws, viz.: that an industry should stand the cost of its own operation. It makes no difference according to this theory whether the cost is due to an injury to a workman or the breaking or wearing out of a machine. It is all fairly and properly charged to expenses incurred in the conduct of the enterprise. Further than this, however, no theory can be justified which puts liability on an industry. A theory justifying the imposition of liability on an industry because the injury is caused by that industry, impliedly excludes liability for all other injuries. Therefore, this clause was written into the statutes limiting the right of workmen to recover for injuries to those which arise out of and in the course of the employment.

In the "Course of" the Employment.—An accident is said to arise in the course of a man's employment if it occurs while he is doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time.[1]

A workman employed to stack sacks in a mill attempted to do his work of hoisting the bundles to the top of the stack by throwing a rope over a revolving shaft near the ceiling, making one end fast to a bundle, pulling the rope taut, and when the shaft had hauled the bundle to the top of the stack, removing it. On the second day that he was using this means to do the work, his arm was caught and injured by the shaft. This man was employed to stack the sacks by manual labor, and not to use machinery for the purpose, and the manner he adopted was unknown to his employers. It was held that the method he adopted of doing his work was altogether outside the scope of his employment.[2]

The master of the Rolls (Cozens-Hardy) thought that this case raised a very close question, and he preferred to decide the case, not so much on the ground of the unreasonableness of the man's actions, as on the ground that what he did was outside the scope of his employment. He said that the man was not employed to pile sacks by any method he thought fit, and that there was no justification for using a new method which would substantially enlarge the scope of his employment.

The Lord President, in the Scotch case of Conway v. Pumpherston Oil Co.,[3] stated two ways in which a workman may be outside the course of his employment. The one is where he exceeds the limits imposed by the nature of the work, as, for instance, where the footman takes the reins from the coachman and drives the horses. He is not within the scope of his employment, as he is not employed for that purpose. The other is where a workman goes into a territory with which he has nothing to do, as, for instance, where a man employed to work in quarry A, or in the top seam, goes into quarry B, or in the lower seam. He is not then in the course of his employment.

A workman, while on his way by a route which he was permitted to take by his employers, attempted to get on a tram car to ride up an incline, which was in violation of his employer's rules, and fell and was killed.

(1) Bryant v. Fissell, (N. J. L., March 24, 1913), 86 Atl. 458; Clover, etc. Co. v. Hughes, 102 L. T. Rep. 340, (1910), A. C. 242, 26 T. L. Rep. 359, 79 L. J. K. B. 470, 3 Butterworth's W. C. Cas. 275.

(2) Plumb v. Cobden Flour Mills Co., (C. A.) 29 T. L. Rep. 232.

(3) (1911) 1 Scots L. T. 440, 48 Sc. L. Rep. 632, 4 Butterworth's W. C. Cas. 392.

Held, that the accident did not occur in the course of his employment.[4]

Arising "Out of" the Employment.—A workman receives injuries by accident "arising out of" his employment when the accident was due to the nature of the work, or was incidental to it. As where a man undertakes to do something and the required exertion which produces the injury is too great for him, whatever the degree of exertion or the condition of his health.[5]

A workman may meet with an accident through want of prudence and caution in doing his ordinary work, or through disobedience to rules, and recover compensation therefor. But if he meets with an accident through doing imprudently or disobediently something different in kind from anything which he was required or expected to do, and put out of the range of his service by an express prohibition, such accident does not arise out of his employment. A workman in a coal mine got into one of a train of tubs in order to get to the part of the mine where he was employed. While in the tub he met with an accident which caused his death. Upon application being made by his father for compensation, it was shown that the workmen were expressly forbidden to ride in the tubs, and while they often did so surreptitiously, they never did if any of the officials of the mine were present. It was held that there was no evidence that the accident arose out of the deceased's employment.[6]

A young lady was employed as ladies' maid and sewing maid. She was sitting in the nursery room on a warm evening with the window open doing some sewing for herself, which she was allowed to do. A beetle flew into the room and the young woman threw up her hand to keep it from striking her face, and in doing so struck her eye with her hand in such a way as to cause serious and permanent injury. Held, that the accident did not arise out of the employment.[7]

A man employed to collect insurance premiums from door to door, slipped on some stairs while pursuing the duties of his employment and was injured. It was held that the accident arose out of his employment.[8]

It is not enough to entitle an applicant to compensation that the accident would not have happened to the workman if he had not been where he was. The mere fact that a man's employment places him in the position he was in when injured by an accident is not sufficient. It must be further shown that the accident arose because of something he was doing in the course of his employment, or because he was exposed by the nature of his employment to some peculiar danger. Unless something like this is shown the applicant must fail, because the accident is not one that arose "out of" the employment.[9]

Injury Must Be Due to a Risk Incidental to the Employment.—While the word "risk" is not used in the Workmen's Compensation statutes, still the injury must be due to a risk that is incidental to the employment to entitle the workman to compensation. Unless this is true, the accident is not one that arises out of the employment.

A locomotive engineer was injured while on duty by a stone thrown by a boy from a bridge, under which the engine was passing at the time. It was held that the accident arose out of and in the course of his employment.[10]

(4) Pope v. Hills Plymouth Co., 102 L. T. Rep. 632, 3 Butterworth's W. C. Cas. 339, affirmed in 105 L. T. Rep. 678, 5 Butterworth's W. C. Cas. 175.

(5) Clover, etc., Co. v. Hughes, 102 L. T. Rep. 340, 26 T. L. Rep. 359, (1910), A. C. 242, 79 L. J. K. B. 470, 3 Butterworth's W. C. Cas. 275.

(6) Barnes v. Nunnery Colliery Co., 105 L. T. Rep. 961, (1912) A. C. 44, 28 T. L. Rep. 135, 81 L. J. K. B. 213, 56 Sol. Jour. 159, 5 Butterworth's W. C. Cas. 195.

(7) Craske v. Wigan, 101 L. T. Rep. 6, 25 T. L. Rep. 632, (1909) 2 K. B. 635, 78 L. J. K. B. 994, 2 Butterworth's W. C. Cas. 35.

(8) Refuge Assurance Co. v. Millar, 49 Sc. L. Rep. 67, 5 Butterworth's W. C. Cas. 522.

(9) Amys v. Barton, 105 L. T. Rep. 619, 28 T. L. Rep. 29, (1912) 1 K. B. 40, 81 L. J. K. B. 65, 5 Butterworth's W. C. Cas. 117.

(10) Challis v. London, etc., R. Co., 93 L. T. Rep. 330, 21 T. L. Rep. 486, 53 Wkly. Rep. 613, 7 W. C. Cas. 23.

The language of the Master of the Rolls (Collins) in rendering opinion in this case makes very plain this point. He said: "I do not think that we should be justified, in deciding a case of this kind, in taking leave of our common sense or of our common knowledge, and I think we must approach this case from the standpoint that we know that a train in motion is an object of attraction for boys, and that it is a very usual incident of passing trains that boys throw stones at them. It seems to me that we cannot ignore that fact when we consider what are the risks incident to the employment of an engine-driver. It seems to me that one of the risks in the employment of an engine-driver is that he or his train may be the object of attraction for missiles coming from boys or others."

A ship's carpenter was working on the poop of his vessel, which was lying in harbor. Someone near lit a cigarette and carelessly threw the match in some shavings which the carpenter had made. The shavings were ignited, and this ignited the carpenter's trousers, which were saturated with inflammable oil which had leaked from a barrel he had shifted in the course of his work. Held, that the injury was by accident arising out of and in the course of the employment.[11] The carpenter's trousers were saturated with oil owing to the work he was doing; he was surrounded by shavings owing to his work; therefore, it was a result of his work that he was, at the moment, working in a position in which he was in more than ordinarily inflammable surroundings. Something occurred by which the inflammable substances were set on fire and the carpenter burned. Thus, it will be seen that the injury was due to a risk incidental to the employment at which the carpenter was engaged.[12]

In Bryan v. Fissell it was said by the Supreme Court of New Jersey: "A risk is incidental to the employment when it belongs to or is connected with what a workman has to do in fulfilling his contract of service. And a risk may be incidental to the employment when it is either an ordinary risk directly connected with the employment, or an extraordinary risk which is only indirectly connected with the employment owing to the special nature of the employment."

In the case last cited it appeared that a workman was killed while employed on a building in the process of construction by a bar of metal caused to fall from a floor above by an employe of an independent contractor employed on the same building. It was held that the risk was one incidental to the employment.

An injury caused by lightning is one that ordinarily cannot be said to be due to a risk incidental to the average man's employment. However, if, by reason of the peculiar position in which a man is required to work, he is more than ordinarily exposed to such danger, the risk arising therefrom may be said to be incidental to his employment. A workman employed in the construction of a building was struck by lightning when working at a height of twenty-three feet. The evidence showed that a man working in that position incurs a risk substantially greater than the normal risk of being struck by lightning. It was held that the accident arose out of the employment.[13]

Risks to Which All Persons Are Alike Exposed.—If a workman is injured or killed by something to which he is no more exposed by reason of his employment than members of the public generally, no recovery can be had therefor. His injury or death was not due to an accident that arose out of the employment; the risk was not peculiar to, that is, incidental to, his employment. Thus, if a workman is struck by lightning while working on the high road, the accident cannot be said to arise out of the employment, because

(11) Manson v. Forth & Clyde Steamship Co., (1913) Sc. Sess. Cas. 921.

(12) N. J. Sup Ct., March 24, 1913, 86 Atl. 458.

(13) Andrew v. Failsworth Industrial Society, 90 L. T. Rep. 611, (1904) 2 K. B. 32, 20 T. L. Rep. 429, 73 L. J. K. B. 510, 6 W. C. Cas. 11.

the employment did not bring upon him any greater risk of being struck by lightning than is incurred by the public generally.[14]

A man employed as school janitor was conveying a mesage on school business one hot day when he became giddy and faint from the heat, and fell, striking his head and sustaining injuries from which he died. Held, that the accident did not arise out of his employment.[15]

However, if the workman's employment exposes him more to certain risks than the average inhabitant, even though they are the ordinary risks of a city street, they are incidental to the employment. A man employed as a salesman and collector made use of a bicycle in his work. While in the course of his duties and while riding his bicycle, he was kicked by a horse. The accident was held to have arisen out of the employment.[16]

When "Employment" Commences and Ends.—"Employment," as used in the Workmen's Compensation statutes, is not synonymous with work. It extends to all things which the workman is entitled by the contract of employment expressly or impliedly to do. Thus, a workman is entitled to pass to and from the premises and, as a rule, to take his meals on the premises. But he is not employed, to do things which are unreasonable or things which are expressly forbidden.[17]

A workman was employed by contractors in widening a siding for a railroad company. His day's work commenced at seven o'clock, a. m. There were two ways of reaching the place of employment; one by way of what was known as the Waterloo Gate, which led along the main line, and this way the workmen had been instructed to use, and the other way by the Maes Glas Gate, which led across the main line. One foggy morning shortly before seven o'clock the workman was killed on the main line. It was held that the accident did not arise out of and in the course of the employment.[18] Here the workman was where his employment did not require him to go, and where there was no reasonable excuse for going if he had obeyed instructions.

Employment does not commence the moment the workman leaves home on his way to work, nor does it continue until he has reached home after the day's work is done. Nor does it continue while the workman steps aside, that is, leaves his work, for purposes of his own. Thus, a railway engineer on his way to work earlier than was necessary, went out of his course for purposes of his own to talk to a signalman. In order for him to reach the man it was necessary to cross some railroad tracks, but on a direct route from his home to the engine shed where he signed on for work every morning there were no tracks to cross. When he had finished speaking to the signalman he started back across the tracks and was struck and killed by an engine. It was held that the accident was not one arising out of and in the course of the employment.[19]

Collins, M. R., stated in his opinion in this case: "He had got to go to his place of employment, and he was not in that employment until he got to it. It seems to me that a person who is in an employment carries with him during the period, whether in the day or night or whatever time it may be, that he is bound to work, all the privileges that are conferred by this act; but when he has left that employment in the evening or at any other hour, from that time until he arrives next morning at the place where his field of employment is, he is in the same position as any other member of the pub-

(14) Kelly v. Kerry County Council, 42 Ir. L. T. 23, 1 Butterworth's W. C. Cas. 194.

(15) Rodger v. Paisley School Board, (1912) Sc. Sess. Cas. 584, 49 Sc. L. Rep. 413, 5 Butterworth's W. C. Cas. 547.

(16) McNeice v. Singer Sewing Mach. Co (1911) Sc. Sess. Cas. 12, 48 Sc. L. Rep. 15, 4 Butterworth's W. C. Cas. 351.

(17) Brice v. Lloyd, 101 L. T. Rep. 472, (1909) 2 K. B. 804, 25 T. L. Rep. 759, 53 Sol. Jour. 744, 2 Butterworth's W. C. Cas. 26.

(18) Holmes v. Mackey, 80 L. T. Rep. 831, (1899) 2 Q. B. 319, 15 T. L. Rep. 351, 68 L. J. Q. B. 724, 1 W. C. Cas. 13.

(19) Benson v. Lancashire, etc., R. Co., 89 L. T. Rep. 715, (1904) 1 K. B. 242, 20 T. L. Rep. 139, 73 L. J. K. B. 122, 6 W. C. Cas. 20.

lic. He carries with him into his period of leisure no insurance from his employers."

On the other hand, a workman's employment may commence a considerable period of time before he actually engages at his work, and it does not necessarily cease the moment he leaves off work. It was the custom of a number of workmen, who came to work by train and who arrived about five or ten minutes after six, a. m., to deposit their time tickets on the ledge of a pigeonhole at an office on the works, then go to a mess cabin, which the employers had erected on the premises, where they had tea prepared by the mess man, and then waited till half-past six, at which time they were summoned to work. The workmen were required to deposit their time tickets by three minutes after half-past six. The employers or their representatives knew of this practice of the workmen. A workman who had been employed about five weeks was going as usual to leave his time tickets when a board he had stepped on slipped and he fell into a hole and was injured. Held, to be an injury caused by accident arising out of and in the course of the employment.[20] In this case it was declared that there is a reasonable margin to be allowed to the workman to get on to the premises and to get to the place where he is to do his work, and if, during that time, he is doing something which is for the benefit of the employer as well as for himself, he is engaged in his employment. The Master of the Rolls (Collins) stated further: "The workman, for the convenience of himself and the master, had got himself into the employment before the time at which under ordinary circumstances he need have done. Owing to the train, he had to arrive at the place of employment before the commencement of the work, and this was known to the employers, and they had provided this refreshment place."

Injury Occurring While Going to Work.—There is considerable difficulty in ascertaining precisely when a workman's employment begins. Each case must be decided on its individual facts. Generally speaking, the factory gate or yard, or the like, indicates the boundary, but in particular instances there may be a wider margin in favor of the workman.

A company allowed their employes to use a short cut over land belonging to them on their way to and from work. There was no contract requiring the employes to furnish this means of access to their works, and there was no obligation on the part of the employes to use it. A workman fell, about three-quarters of a mile from the employers' works, while using this path on his way to work and was injured. Held, that the accident did not arise out of and in the course of his employment.[21]

A collier, in order to reach his work, had to pass through an iron gate on the employer's premises one hundred yards from the lamp room, the place where he would first go. In passing through, the gate suddenly closed and caught and injured him. It was held that he was injured by an accident arising out of and in the course of his employment.[22]

It was contended in this case that as the gate was more than one hundred yards from the lamp room, it was outside the reasonable margin of space within which the workman going to his employment was entitled to protection of the Compensation statute. This contention, however, was of no avail.

While proceeding above ground to his work, a miner slipped and broke his leg on the employers' premises several feet from the doorway of a horizontal entrance, at which place he intended to enter the mine. Held that the accident arose out of and in the course of his employment.[23]

Injuries received while leaving work—The same theories of the law are involved

(20) Sharp v. Johnson & Co., 92 L. T. Rep. 675, (1905) 2 K. B. 139, 21 T. L. Rep. 482, 74 L. J. K. B. 566, 7 W. C. Cas. 28.

(21) Walters v. Stavely Coal, etc., Co., 105 L. T. Rep. 119, 4 Butterworth's W. C. Cas. 303.

(22) Hoskins v. Lancaster, 26 T. L. Rep. 612, 3 Butterworth's W. C. Cas. 476.

(23) Mackenzie v. Coltness Iron Co., 6 Sc. Sess. Cas. (5th series) 8, 41 Sc. L. Rep. 6.

in this and the question just discussed. It will suffice, therefore, to give a few illustrations.

On leaving the mine after his work was done, a miner, instead of taking the recognized road provided by the employers, proceeded by way of a steep and very rough path. This path was not formed in any way, but was worn into uneven steps, and while it was occasionally used by men who were in a hurry, there was no evidence that the employers knew of this, and its use was neither sanctioned nor forbidden. In walking down this path the miner fell and received fatal injuries. It was held that the accident did not arise out of and in the course of the employment.[24]

In this case the Lord President said: "I think that where there is a perfectly proper and recognized road out of the premises it is impossible to say that a man is in the course of his employment if he neglects that road and goes by some other means of exit, which in point of fact is really no road at all."

A workman was employed to assist in unloading a vessel, which was lying in harbor. When that work was done he put on the hatches and prepared to go home. He crossed on a plank belonging to the vessel and one end of which rested on a fixed ladder, which was a part of the quay. He proceeded a few steps on this ladder, when he slipped and was injured. Held, that the accident did not arise out of and in the course of the employment, as the ladder was a part of the quay and outside the sphere of the workman's employment.[25]

A man was employed as riveter on board a ship in dock. He started to go ashore for his breakfast, but found that the vessel was being removed to a dry dock; the gangway having been removed and the ship already a short distance from the quay. The only means of reaching shore was by way of a rope, which still held the vessel to the quay. A fellow workman had gotten safely to shore by this means, and he attempted to do so. In the attempt the rope gave way and he was thrown against the quay and was injured. The County Court Judge (trial judge) found that going to and leaving the ship was a part of the workman's employment; that in acting the way he did he thought the risk was small; that in the absence of the gangway, the man had acted reasonably in taking the risk, and consequently the accident arose out of and in the course of the employment. On appeal this finding was upheld.[26]

Injury occurring during cessation of work—The fact that an accident happens at a time when there is a temporary cessation of work does not prevent its being one arising out of and in the course of the employment. The employment continues during all the time from the employe's arrival on the premises until his departure, provided he is engaged in the employment or something ancillary thereto.[27]

Minor employes occupying a platform where they were sent to rest during an intermission in the performance of their duties, were held to continue as employes in the service of the employer during such time.[28]

A workman employed on the premises near the employer's factory, went to the factory, with the permission of his foreman, about four o'clock of a cold morning, to warm. Held, that he was engaged in the line of his duty while there.[29]

Injury occurring during noon hour—It has been held that the relation of master and servant continues to exist during the servants' noon hour, where it is understood that the servant will remain on the master's premises to eat his meal. The cases

(24) Hendry v. United Collieries, (1910) Sc. Sess. Cas. 709, 47 Sc. L. Rep. 635, 3 Butterworth's W. C. Cas. 567.

(25) Webber v. Wansbrough Paper Co., 29 T. L. Rep. 704.

(26) Keyser v. Burdick & Co., 4 Butterworth's W. C. Cas. 87.

(27) Blovelt v. Sawyer, 89 L. T. Rep. 658, (1904) 1 K. B. 271, 20 T. L. Rep. 105, 6 W. C. Cas. 16.

(28) Chambers v. Woodbury Mfg. Co., 106 Md. 496, 68 Atl. 290, 14 L. R. A. (N. S.) 383.

(29) Parkinson Sugar Co. v. Riley, 50 Kan. 401, 31 Pac. 1090, 34 Am. St. Rep. 123.

upheld this doctrine long before the adoption of the Compensation statutes, and the cases decided under the English Compensation statute follow the same rule, as the principle of law is the same now as it has always been.

A teamster took his team to the employer's stable for their midday meal, and stayed at the stable to eat his meal. While eating, a stable cat sprang upon and bit him, without provocation from him. The accident was held to be one arising out of and in the course of his employment.[30]

This rule, however, has its limitations. It does not mean that a workman may go into any dangerous position he may see fit to eat his lunch and still be within the protection of the statute. If by exposing himself to such additional dangers he is injured, such injury is not one arising out of the employment.

A workman went into the pump room of his employer's works to eat his lunch. In the room was a large tank upon which the workman climbed. Only the chief engineer and the chief stoker were authorized to do anything with the tank. The employer furnished a warm and well lighted room in which the employes could eat their meals, but the employes were not required to do so. The workman went to the pump room on account of its warmth. When he had finished eating he attempted to return from the tank, and fell through an aperture and sustained injuries which resulted in his death. It was held that the workman did not have a right to eat his lunch on any portion of the employer's premises, regardless of the dangerous character of the particular place sought; that he had needlessly exposed himself, and that while his injury was due to an accident arising in the course of the employment, it did not arise out of it.[31]

A workman paid by the hour is within the protection of the statutes during noon hour, although not paid for that hour.[32]

Injured while being conveyed in employer's conveyance—Where workmen are employed to work at a certain place, and are transported to and from such place by the employer, as a part of their contract of employment, the period of service continues during the time of transportation.[33]

It has been held that the relation continues during the transportation of the servant by the master, or with his consent, where from the character of the service such transportation is beneficial both to the master and servant.[34]

The owners of a colliery furnished a train, of which they owned the coaches but which was hauled by a railway company, for the purpose of conveying a number of their employes between the colliery and their homes, a distance of several miles. Near the colliery the owners had constructed a platform on property belonging to the railway company which was for the exclusive use of the employes. The train was operated free of charge to the employes, and was run regularly between the home town of the employes and the colliery. An employe was waiting on the platform to get into a return train when he was pushed off and killed by the train. It was held that it was an implied part of the contract of service that the train should be provided by the employers, and that the colliers should have the right to travel to and fro without charge, and that the employment began when the colliers entered the train in the morning and ceased when they left it at night, and that the employers were liable to pay compensation for the death.[35]

(30) Rowland v. Wright, 99 L. T. Rep. 758, 24 T. L. Rep. 852, 77 L. J. K. B. 1071, 1 Butterworth's W. C. Cas. 192.

(31) Brice v. Lloyd, 101 L. T. Rep. 482, 25 T. L. Rep. 759, (1909) 2 K. B. 804, 2 Butterworth's W. C. Cas. 26.

(32) Blovelt v. Sawyer, 89 L. T. Rep. 658, (1904) 1 K. B. 271, 20 T. L. Rep. 105, 6 W. C. Cas. 16.

(33) Alabama G. S. R. Co. v. Brock, 161 Ala. 351, 49 So. 453; Abend v. Terre Haute, etc., R. Co., 111 Ill. 202, 53 Am. Rep. 616; Ryan v. Cumberland Valley R. Co., 23 Pa. St. 384.

(34) Cicalose v. Lehigh Valley R. Co., 75 N J. L. 897, 69 Atl. 166.

(35) Cremins v. Guest, 98 L. T. Rep. 335, (1908) 1 K. B. 469, 24 T. L. Rep. 189, 77 L. J. K. B. 326, 1 Butterworth's W. C. Cas. 160.

Where an employer operates an elevator in his place of business for conveying his employes to and from the floor on which they work, and between floors, the employes continue in their capacity as such, and are not passengers, while being so conveyed for purposes incidental to their employment.[36]

In McDonough v. Lanpher, 55 Minn. 501, 57 N. W. 152, 43 Am. St. Rep. 541, the employes of the defendant, who used the whole of a five-story building were permitted to ride in the freight elevator to and from their places of work, although they were not required to do so. It was held that while so riding they were in their capacity as employes.

However, if the riding in the employer's conveyance is not in some way incidental to or connected with the employment, the rule is different. Thus, it has been held that a person using a bridge, by virtue of a pass given him by his employer for use in going to and returning from work, was a passenger over the bridge at such times, and was not in the capacity of employe, although the employer was the owner of the bridge.[37]

A station agent riding home on a passenger train of his employer, by permission of the conductor, five hours after his day's work was ended, was held not to be in his capacity as employe.[38]

Injury occurring while workman is about his own affairs—If a workman is about his own affairs at the time an accident happens, such accident cannot be said to arise out of and in the course of his employment. If he deliberately and for no good reason leaves the work he is employed upon and attempts to do something he knows he is not employed to do, it would be contradictory to say that he is acting within the scope of his employment.

An engineer left his engine when it was standing at rest and went to talk to the fireman of another engine, on business of his own wholly unconnected with the work of his employer. On the way back to his engine he was knocked down by a truck and killed. It was held that the accident did not arise out of and in the course of his employment, because he was where he had no right in his employment to be, and for the moment had quitted his employment.[39]

On the other hand, if a man, during his employment, is doing what he may reasonably do, although for his own convenience, and is injured, he is within the protection of the statutes. A workman was employed to load and accompany a train of wagons drawn by a traction engine. While riding on one of the wagons he dropped his pipe and got down to recover it, and in doing so he stumbled and fell and was run over and killed by the wagon. Held, that the accident arose out of and in the course of his employment.[40]

Here it was said that a workman of this sort may reasonably smoke, may reasonably drop his pipe, and may reasonably pick it up again.

Injury occurring to workman acting in emergency—The receipt by a workman of an injury while he is acting in an emergency is often held to be one arising out of and in the course of the employment when it would not be so held were it not for the emergency. The rule is that, in a sudden emergency where there is danger, a workman does not go out of his employment if he endeavors to prevent the danger from taking effect. It is presumed that an employe has his employer's interests at heart, and when danger threatens those interests that he will naturally do what he can to pro-

(36) Putnam v. Pacific Monthly Co., (Oreg., March, 1913), 130 Pac. 986.

(37) Pembroke v. Hannibal & St. J. R. Co., 32 Ill. App. 61.

(38) Louisville & N. R. Co., v. Scott, 108 Ky. 392, 56 S. W. 674, 50 L. R. A. 381.

(39) Reed v. Great Western R. Co., 99 L. T. Rep. 781, (1909) A. C. 31, 25 T. L. Rep. 36, 78 L. J. K. B. 31, 46 Sc. L. Rep. 700, 2 Butterworth's W. C. Cas. 1009.

(40) McLauchlan v. Anderson, (1911) Sc. Sess. Cas. 529, 48 Sc. L. Rep. 349, 4 Butterworth's W. C. Cas. 376.

tect them. When doing so, instead of allowing him to suffer from the ingratitude of the employer, the courts hold that he was engaged in his employment, because he was doing what, beyond any doubt, the employer would have had him do could he have foreseen the happening of the particular event. Perhaps the employer would not have instructed the employe to do the precise thing that he did do, but he would have instructed him generally to protect his interests. In fact, this is considered to be a general duty of the employe at all times. Acting in an emergency the employe is not expected to act as he would under circumstances that give time for more deliberate action.

A workman employed to inspect a mine and report at the office of the owner, was on his way to make a report and climbed on a truck to ride, which was in violation of the express rules of the employer. The horse drawing the truck ran away, and in an attempt to stop it the workman was killed. It was contended that the accident was not one arising out of and in the course of the employment as there was no duty on the workman to stop the horse, and that at the time he was disobeying orders. It was held, however, that there was an emergency, and that any servant ought to try to stop a runaway horse of his master, and that the accident did arise out of and in the course of the employment.[41]

Miscellaneous—It is held that a workman injured while doing something not required by his employment, but done for his personal pleasure, cannot recover compensation because the accident is not one arising out of the employment. A ticket collector in the employ of a railroad company was killed while standing on the footboard of his train. He had finished collecting tickets, but his day's work was not ended, and he was on the footboard merely for his own pleasure. It was held that the accident did not arise out of the employment.[42]

Drinking water is a necessity to man's existence, and frequently a necessity when he is at work to the rendering of the best labor of which he is capable. When a workman stops his actual labors to get a drink of water his employment ordinarily continues during the interval required for him to get the drink and return to his work. If he is injured during such time, it cannot be said on that account that the accident causing the injury did not arise out of and in the course of his employment. Of course, there could be cases to which this rule would not apply. If, for instance, while going for a drink the workman went an unnecessary distance from his work to secure it, it might well be said that in so doing the employment was for at least a part of the time, suspended. Especially might this be true if the employer furnished drinking water at a more convenient place.

A miner who was killed by a runaway hutch when he was returning from getting a drink of water on the premises, was held to have been killed by an accident arising out of and in the course of the employment.[43]

The work of a girl employed in a mill ended on Wednesday, but she could not be paid until two days later. She returned to the mill on the following Friday to secure her pay, as she was supposed to do, and while there fell down some stairs and was injured. Held, that the employment existed at that time, and that the accident arose out of and in the course of the employment.[44]

C. P. BERRY.

St. Louis, Mo.

(41) Rees v. Thomas, 80 L. T. Rep. 578, (1899) 1 Q. B. 1015, 15 T. L. Rep. 301, 68 L. J. Q. B. 539, 1 W. C. Cas. 9.

(42) Smith v. Lancashire, etc., R. Co., 79 L. T. Rep. 633, (1899) 1 Q. B. 141, 15 T. L. Rep. 64, 68 L. J. Q. B. 51, 1 W. C. Cas. 1.

(43) Keenan v. Flemington Coal Co., 5 Sc. Sess. Cas. (5th series) 164, 40 Sc. L. Rep. 144, 10 Sc. L. T. 409.

(44) Riley v. Holland, 104 L. T. Rep. 371, (1911) 1 K. B. 1029, 4 Butterworth's W. C. Cas. 155.

ACTION—SPLITTING CAUSE OF.

UNDERWRITERS AT LLOYD'S INS. CO. v. VICKSBURG TRACTION CO.

Supreme Court of Mississippi. Dec. 8, 1913.

63 So. 455.

Plaintiff insured an automobile against injury under a policy providing for subrogation. It was struck by defendant's street car, and not only was the motor injured, but the owner suffered personal injuries. Plaintiff discharged its liability under the policy and received an assignment of the owner's rights for injury to the car. Thereafter the owner recovered against defendant for his personal injuries. Held, that the recovery of that judgment was not an adjudication precluding a subsequent recovery by plaintiff under its assignment, for, owing to the provisions of the policy providing for subrogation, two causes of action arose upon the accident, and there was no splitting of causes which would render a recovery on one a bar to the other.

Reed, J. F. E. O'Neil, on September 5, 1909, while driving his automobile along the streets of Vicksburg and crossing the tracks of the Vicksburg Traction Company, was struck by an electric car. His automobile was damaged and he was injured in his person. He held a policy of insurance on the automobile in the appellant company, dated August 2, 1909. Pursuant to this policy, on November 26, 1909, in consideration of the payment by appellant of the amount of the policy, as required thereby, Mr. O'Neil executed to appellant an article of subrogation, in accordance with the terms of the policy, whereby he assigned to appellant all of his right, claim, and interest against appellee for damages to his automobile. In the policy is the following provision: "In case of payment of loss under this policy, these assurers shall be subrogated, to the amount of such payment, to all rights of recovery for such loss by the assured against persons, corporations, or estates; and the assured shall execute all papers required, and shall co-operate with these assurers to secure these assurers such rights."

On December 16, 1909, Mr. O'Neil brought suit against appellee for personal injuries sustained by him in the collision, and recovered a judgment. Appellant, as assignee of O'Neil, afterward brought the present suit against appellee to recover for damages to the automobile. Appellee pleaded as a bar to the action that appellant's claim for damages was res adjudicata because of the recovery by O'Neil from appellee in the suit for injuries to his person sustained in the collision, claiming that all injuries from the collision constituted only one cause of action, and could not be split so that separate suits could be brought for the injuries to his person and for damages to his automobile. A demurrer interposed by appellant to appellee's plea was overruled by the court, and from such action this appeal is taken.

It is contended by appellee that this case is controlled by the decision of this court in the case of Kimball v. Railroad Company, 94 Miss. 396, 48 South, 230. Therein Kimball recovered a judgment against the railroad company for damages done to his horse and wagon while he was attempting to drive crossing in Biloxi. After judgment had been fully satisfied, he brought suit to recover for injuries sustained to his person in the same collision. The court decided that he could not maintain the second action; that the injury to himself and his property was by the same tortious act, and gave rise to but a single cause of action; that the different injuries were merely separate items of damages; and that he was not permitted to split up his cause of action.

We see a difference between this case and the Kimball Case. Mr. Kimball brought both suits against the railroad company. The entire cause of action was in him when he filed his first suit for damages done his personal property and when he sued to recover for injuries to his person. He himself split his cause of action, which all along was wholly in him. This is not so in the case now before us. Mr. O'Neil had assigned all of his right and interest against the traction company for damages to his automobile before he filed suit for personal injuries. When the suit was entered by him he had no cause of action against the company for damages to the automobile. This disposition by him of his right to damages to the automobile was in pursuance of a policy of insurance written for him by appellant company. It was in accordance with an agreement executed by him to make such transfer, whereby appellant would be subrogated to all of his rights to recover.

Appellant had an equitable interest in the automobile at the time of the collision by reason of having written the policy of insurance. When it was damaged, then, by virtue of the contract of insurance and the article of subrogation, appellant had such an interest in the claim for damages. This interest became a right to sue at law when appellant paid to Mr. O'Neil the amount owing him for loss under the policy and received from him assignment of his claim and was

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subrogated to his right to recover for damages. Therefore, when the suit was filed by Mr. O'Neil on December 16, 1909, against appellee, the cause of action for recovery for injuries sustained to his person was in Mr. O'Neil, and the cause of action to recover for damages to the automobile was in appellant. There were then two distinct causes of action, two separate rights to recover, in two different persons.

In delivering the opinion of the court in the case of Kimball v. Railroad Company, supra, Judge Mayes cited the case of King v. Railway Company, 80 Minn. 83, 82 N. W. 1113, 50 L. R. A. 161, 81 Am. St. Rep. 238, and made the following quotation from the opinion in that case: "That rule of construction should be adopted which will most speedily and economically bring litigation to an end, if at the same time it conserves the ends of justice. There is nothing to be gained in splitting up the rights of an injured party as in this case, and much may be saved if one action is made to cover the subject." We note, upon examination of the report of the King Case, that both suits were brought by King. The first suit was for personal injuries suffered in a collision with a train of the railroad company, and the second was for damages done to his wagon, horse, and harness. The court decided that he could not split his cause of action.

In the Kimball Case, as well as in the King Case, we can see that the ends of justice were conserved by requiring the parties to bring one suit for their one cause of action. But it does not seem to us that the ends of justice would be conserved in the present case by deciding that the appellant had no cause of action for damages to the automobile because Mr. O'Neil had brought his suit for personal injuries suffered by him—the only cause of action he had against appellee when the suit was filed. It would not "conserve the ends of justice," but would work an injustice to hold that Mr. O'Neil could, as claiemd, destroy the right of appellant, vested in the manner above shown, to sue for damages to the automobile by bringing suit for injuries to his person. Appellant could not control Mr. O'Neil's course in entering suit. Appellant had no interest in his cause of action for personal injuries, but owned absolutely the right to recover for damages to the automobile.

We do not intend to disturb the rule announced in the Kimball Case. As applied in that case we approve it. We do not think it should be stretched to include the case before us. It is not applicable here. We distinguish that case from this. Appellant's right to recover in this case should not be defeated by Mr. O'Neil's suit. The ends of justice, the public welfare, will be conserved by holding that appellant, under the facts of this case, had a cause of action against appellee.

Reversed and remanded.

NOTE.—*Exception to the Splitting of Cause of Action.*—We find no case on all fours with the instant case, but we do find several cases which demonstrate, that the rule against vexing a defendant twice with one cause of action is a rule of policy, confining its operation to two parties, one of whom has the cause of action, and even then it is far from inflexible. It intends to work justice and is not a cloak for injustice.

The Missouri Supreme Court after stating the rule against splitting causes of action, to-wit: "It has always been regarded as a matter of concern to the state that litigation should have an end, and that no citizen should be unnecessarily barrassed with a multiplicity of suits," . . . And it has been uniformly held that a single tort gives only one cause of action and the damages resulting from one and the same cause must be assessed and recovered in one suit," it further says: "To this general rule there is an exception, which was noted by this court in Moran v. Plankington, 64 Mo. 337, in which it was held that a party would not be precluded in consequence of a former suit, if such former action was brought in unavoidable of the full extent of the wrongs received or injuries done. Risby v. Squire, 53 Barb. 280." Wheeler Savings Bank v. Tracy, 141 Mo. 252, 42 S. W. 946, 64 Am. St. Rep. 461.

In the Plankington case it was said the rule is not of universal application and refusal to apply it was in a case where 17 hogs were stolen by defendant, but he had concealed evidence as to four of them which were sued for afterwards. It was said the rule *"presupposes knowledge* of the constituent elements of the cause of action sought to be unwarrantably divided. If this be true, and it be true also that the law does not require the impossible, then it must needs follow that a party should not be precluded in consequence of a former action, if such action were brought in unavoidable ignorance of the full extent of the wrongs received or injuries done, Any other conclusion would be reached only through sanctioning the rankest injustice."

This case is a pushing of the excuse made a great way because in the prior suit defendant had judgment. His ignorance carried over to him more than the right to have embraced, in effect, in the judgment the damages he might have recovered, but to dispute its correctness for what was adjudged. In other words the law of that transaction, if the tort was indivisible, should have been deemed settled, and the only issue that should have been deemed open, if plaintiff had recovered, was adding or not to recovery. If, on the same facts, there was adjudged no recovery for the part sued for, no additional suit should have been allowed, because some larger claim might have been made in the former suit.

In the Risby case, there was excusable ignorance of the same kind as in the Plankington case, that is, that defendant had possession of other

property than was sued for in a former action. This former action was still pending. The court said: "The only question in the case in which there was room for any reasonable doubt, is that arising from the pendency of another action. Certainly the law is opposed to circuity of action; that is, opposed to any attempt to obtain indirectly by means of a subsequent action, a result which may be reached in an action already pending. But, when the first action, the pending of which the defendants set up, was commenced, it was not known to any of the parties that the defendants had custody of the five bags (of chicory), for which this action was brought. The plaintiff's right to 640 bags was not disclosed; evidently, therefore, the second action was not commenced for the purpose of obtaining, indirectly, by means of it, a result which might have been reached in an action of law already pending." Here again it is suggested, that the trial of either of the actions first, if there is excuse for not embracing all the damage in the one first brought, might not settle the law of the case for both of them. It is enough for excuse of this sort to go no further than to add to the damages by a second suit, and it should not be allowed to disturb any law settled in defendant's favor by the first suit.

In Folsom v. Clemence, 119 Mass. 473, the rule of excuse seems conceded in a negative pregnant. Thus it was ruled that after judgment for the possession of certain chattels, an action for other chattels taken by the same act, but accidentally omitted in the prior action, cannot be maintained. Plaintiff recovered judgment in the former action. It is perceived, therefore, that plaintiff cannot, having the right to sue for the entire damage, either intentionally or from negligent oversight, avoid concluding himself against further relief, or as it is said vex the defendant twice for the same cause of action, when he has no valid excuse therefor. If he has valid excuse, it seems that the general rule is deemed to work such injustice, that as a policy it ought not to be enforced.

The principle in the Plankington case was affirmed in Osh v. M. K. & T. Ry. Co., 130 Mo. l. c. 49, wherein it was also adjudged that one can settle with another in a partial way without defeating his right of action. See also Bliss v. Railroad, 160 Mass. 447, and Lusted v. Railroad, 71 Wis. 391, where there was a release as to damages to property, right to sue for personal injuries remaining intact.

In Morgan v. Railroad, 111 Mo. App. 721, the excuse of ignorance of extent of damage was recognized upon a full review of cases on this subject, the court saying: "It is commendable to make an exception to the rule in cases where the plaintiff was unavoidably ignorant of the damages alleged in his second suit when he brought his first one. The exception is founded on justice and supported by sound reasoning and has been established in this jurisdiction."

As showing an extreme case of the rule of one action being *res judicata* it was said in Farrington v. Payne, 15 Johns. 432: "Suppose a trespass or a conversion of 1000 barrels of flour, would it not be outrageous to allow a separate action for each barrel? Undoubtedly it would. But in such a case where the owner is ignorant of the extent of his loss, would it not be far more outrageous to allow a recovery of one barrel to prevent the recovery of the remaining 999? The question will meet with an affirmative response in every heart?" See also Alexander v. Bridgford, 59 Ark. 195, 27 S. W. 69; Gedney v. Gedney, 160 N. Y. 471, 55 N. E. 1.

We arrive then at the point that there is merely a rule of policy designed to operate justly, and on this theory it would seem that the instant case is properly decided. *A fortiori* should a second suit be allowed when the plaintiff no longer is the only one concerned in the loss, and was not when he instituted the first suit, in what is sued for in the second suit. He had the right to insure his automobile and the assignment after the accident was in pursuance of a lawful agreement made prior to the accident. A wrongdoer, subsequent to that agreement, has little standing to complain of such contractural arrangement. If plaintiff had been riding in a hired vehicle there could have been two suits, and if it is justice to allow this, it ought to be justice to allow two suits, if this protects the rights of any oher different parties lawfully acquired prior to the institution of suit, and existing when the first suit is brought. All of the cases we have found concern first and second suits between the same parties. The instant case ought not to be controlled by them, at least when the party bringing the second suit acquired the right to his status before the accident. Suppose the insurance company had been the first to sue, ought it to be said, the other party would be barred from suing for his personal injuries? We think not. C.

HUMOR OF THE LAW.

A Presbyterian minister by the name of Haynes was once traveling through the wilds of West Virginia. On Sunday evening late he called a halt at a log cabin by the road and gave a halloo, when a woman came to the door.

Haynes said: "Where is your husband?"

"He went coon hunting. He killed two whoopin' big coons last Sunday."

"Doesn't your husband fear the Lord?"

"Oh, yes; he always takes his gun with him.

"Are there any Presbyterians in this country?"

"I don't know whether he has killed 'any' Presbyterian or not. You can go out to the shed and look at the hides and see."—National Monthly.

The minister at a certain church one Sunday gave out the hymn, "I love to steal awhile away," and the deacon who led the singing commenced, "I love to steal—" but found he had pitched it too high. Again he commenced, "I love to steal—" but this time it was too low: once more he tried, "I love to steal—" and it was again wrong. After the third failure the minister rose and said:

"Seeing our brother's propensities, let us pray."

Dr. Adam Clarke, who had a strong aversion to pork, was called upon to say grace at dinner where the principal dish was a roast pig. He is reported to have said: "O Lord, if thou canst bless under the Gospel what thou dost curse under the law, bless the pig."

WEEKLY DIGEST.

Weekly Digest of All the Current Opinions of All the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Assignment for Benefit of Creditors**—Contracts By Assignor.—An assignee for the benefit of creditors stands in the shoes of the insolvent in respect to liability on contracts made by him.—Des Moines Bridge & Iron Works v. Plane, Iowa, 143 N. W. 866.

2.——Defeasance Clause.—That an instrument conveying property to a trustee for the benefit of creditors contains a defeasance clause is not conclusive evidence that it is a mortgage rather than an assignment for the benefit of creditors.—Stuart v. Bloch, Okla., 135 Pac. 1147.

3. **Bankruptcy**—Jurisdiction.—In order to confer jurisdiction, it is essential that the alleged bankrupt either had his principal place of business, or his residence or his domicile, within the division of the district in which jurisdiction is invoked.—In re Lemen, U. S. D. C., 208 Fed. 80.

4.——Mechanics' Liens.—Where the original contractor is adjudged a bankrupt during the construction of the building, his trustees should be made a party defendant in actions by subcontractors or materialmen, and the judgment taken against him should be made the basis of the liens claimed against the property.—Eberle v. Drennan, Okla., 136 Pac. 162.

5.——Preference.—Where a creditor takes security from an insolvent within four months prior to bankruptcy, he is bound to make inquiry to ascertain whether a preference was intended and is chargeable with notice of all facts which such inquiry, if made, would have disclosed.—Walters v. Zimmerman, U. S. D. C., 208 Fed. 62.

6.——Preference.—A bank which credits to the deposit account of certain stock brokers the amount of a clearance loan to be used to clear securities and to be repaid later in the day, and which does not require a separate account to be kept of money received from deliveries of the stock so released, obtains a preference voidable on the subsequent bankruptcy of the brokers, where after their suspension it receives securities to make good the brokers' obligation to the bank.—National City Bank of New York v. Hotchkiss, 34 Sup. Ct. Rep. 20.

7. **Bills and Notes**—Consideration.—A note given by shareholders who were not responsible for a corporation's debts to reimburse another for moneys advanced the corporation is void for want of consideration.—Witt v. Wilson, Tex., 160 S. W. 309.

8.——Joint and Several Liability.—Where two persons, as makers, sign negotiable notes, reading, "I promise to pay," etc., and given for the price of machinery sold and delivered to both of them, they are liable in solido.—J. I. Case Threshing Mach. Co. v. Bridger, La., 63 So. 319.

9.——Renewal Note.—A renewal note is presumed to have been accepted as conditional payment only, and not in discharge of the original note.—State Bank of Isanti v. Mutual Telephone Co., Minn., 143 N. W. 912.

10. **Bonds**—Construction.—A bank cashier's bond conditioned that he shall faithfully account for all moneys coming into his hands as such cashier held an indemnity to the bank, though its officers are named therein as obligees, "as" president, and "as" directors of the bank in its corporate name; the word "as" designating the official relation of the obligees to the real beneficiary.—Clark v. Nickell, W. Va., 79 S. E. 1020.

11. **Brokers**—Compensation.—Where one employs another to bring about meetings between him and certain individuals to whom he desires to make a sale, he cannot discharge the agent after the meetings are brought about, but before the sale is consummated, so as to defeat the right to compensation.—Smith v. Plant, Mass., 103 N. E. 58.

12. **Building and Loan Associations**—Fines and Penalties.—In an action by a building and loan association to collect on a note and mortgage, the borrower is not entitled to credit for penalties paid upon his stock, for they are not credited to the member, but go to the general or contingent fund of the association.—Simons v. Kosciusko Building, Loan & Savings Ass'n., Ind., 103 N. E. 2.

13. **Carriers of Goods**—Delivery.—A carrier of goods is always justified in delivering them to their true owner, though not the consignee or lawful holder of the bill of lading.—W. H. Stanchfield Warehouse Co. v. Central R. of Oregon, Ore., 136 Pac. 34.

14.——Discrimination.—A shipper is entitled to recover damages for unlawful discrimination in rates charged on shipments to it at a point near the border of the state, though it may later send them to points outside the state; they being intrastate shipments.—Mitchell Coal & Coke Co. v. Pennsylvania R. Co., Pa., 88 Atl. 743.

15.——Discrimination.—Where a carrier refuses without lawful excuse to furnish sufficient cars to a shipper and is guilty of gross discrimination in favor of other shippers, it is liable for the resulting damages.—Sonman Shaft Coal Co. v. Pennsylvania R. Co., Pa., 88 Atl. 746.

16.——Lawful Rates.—Where a shipper of flour was, by a mistake of a responsible officer of plaintiff railroad company, given a rate which was less than that legally prescribed and shipped pursuant to such rate for two years,

the railroad company, upon discovering the mistake was entitled to recover the difference between the legal rate and the rate paid by the shipper; equities in favor of the shipper constituting no defense.—Central R. Co. of New Jersey v. Mauser, Pa., 88 Atl. 791.

17. **Carriers of Passengers**—Lawful Rates.—Where a railroad company voluntarily does a large part of its intrastate freight business in a state at cost or at a loss, in order to develop its interstate business it cannot attack passenger rates fixed by the state as confiscatory because its entire intrastate business does not yield a fair return.—Louisville & N. R. Co. v. Railroad Commission of Alabama, U. S. D. C., 208 Fed. 35.

18.——Relation of Passenger.—The payment of fare or the possession of a ticket or pass are not absolutely essential to the creation of the relation of passenger and carrier, so far as relates to the carrier's liability for injuries to a passenger.—St. Louis & S. F. Ry. Co. v. Nichols, Okla., 136 Pac. 159.

19. **Common Carriers**—Fixing Rates.—The ratio of the total operating expenses of a railroad, or a railroad division, to the entire receipts of such railroad or division is not a sufficient basis, when testing the reasonableness of rates prescribed under state authority for determining the cost of interstate freight traffic moving on class rates between two points of such division.—Wood v. Vandalia R. Co., 34 Sup. Ct. Rep. 7.

30. **Contracts**—Renunciation.—To constitute a breach of contract by renunciation, the denial of liability must distinctly cover all of the obligations of the defaulting party under the contract.—Indiana Life Endowment Co. v. Reed, Ind., 103 N. E. 77.

21. **Corporations** — Agency.—A corporation can act only through its officers and agents, and their knowledge in the transaction of corporate business within the scope of their authority is the knowledge of the corporation.—First Nat. Bank v. Burns, Ohio, 103 N. E. 93.

22.—Dissolution.—The dissolution of a corporation resulting from a statute declaring the forfeiture of the corporate franchise for nonpayment of a license tax has the same effect as if it were declared by judicial decree.—Brandon v. Umpqua Lumber & Timber Co., Cal., 136 Pac. 62.

23.——Interlocking Directors.—Where the same persons constitute a majority of the directors of two corporations, transactions between them controlled by such directors, in the absence of actual or intended fraud, are voidable only, and not void, and may be ratified.—Sausalito Bay Land Co. v. Sausalito Improvement Co., Cal., 136 Pac. 57.

24.——Police Power.—A corporation accepts its charter from the commonwealth in subordination to the sovereign police power of the state, to be exercised whenever the safety of the public may call for such exercise.—Pennsylvania R. Co. v. Ewing, Pa., 88 Atl. 775.

25.——Pleadings.—A bill by a stockholder on behalf of a corporation may, when attacked by general demurrer, be amended to show that the corporation and its officers refused to act.—Clarke v. Marks, Me., 88 Atl. 718.

26.——Transfer of Shares.—Where the corporation refuses to register a transfer of shares, the shareholder may either maintain an action for a conversion of the stock or one in equity to compel registration.—Spangenberg v. Western Heavy Hardware & Iron Co., Cal., 135 Pac. 1127.

27. **Courts**—Action for Penalties.—The courts of Connecticut will not enforce the statutes of another state or country imposing penalties nor rights arising thereunder.—Christilly v. Warner, Conn., 88 Atl. 711.

28. **Criminal Law**—Circumstantial Evidence.—In a prosecution for passing a forged check, evidence that when accused was arrested other forged drafts of checks were found on his person and in his baggage, and as to the character of the ink with which they were written, held admissible.—Dugat v. State, Tex., 160 S. W. 376.

29.——Circumstantial Evidence.—Where, in a prosecution for cattle theft, the state proved, before introducing in evidence a map showing the pasture of the alleged owner, together with the gates, etc., that it was approximately correct, the map was properly admitted in evidence and used by witnesses; it not being necessary to show that it was absolutely correct.—Reynolds v. State, Tex., 160 S. W. 362.

30.——Circumstantial Evidence.—In a rape prosecution alleged to have been committed by force, prosecutrix's shoe with a portion of the heel off, a piece of the heel found at the place of the alleged rape, prosecutrix's bent hat pin, and accused's tie pin also found there, as well as prosecutrix's torn waist and other clothes, were all properly admitted.—Sharp v. State, Tex., 160 S. W. 369.

31.——Disorderly House.—In a prosecution for keeping a disorderly house, it was competent for witnesses to testify as to accused's reputation, but they could not testify to their opinion as to whether he kept a disorderly house.—People v. Newbold, Ill., 103 N. E. 69.

32. **Death**—Measure of Damages.—The damages recoverable by a parent for the negligent death of a son under the Federal Employers' Liability Act are limited to such loss as results to the parent because of being deprived of a reasonable expectation of pecuniary benefit by the wrongful death of the employe.—Dooley v. Seaboard Air Line Ry. Co., N. C., 79 S. E. 970.

33. **Deeds**—Consideration.—Where the grantee verbally agrees to maintain the grantors and such agreement is properly pleaded and sufficiently proved, it will be deemed the actual consideration, though the deed of grant recites as consideration therefor "one dollar in hand paid."—Cumberledge v. Cumberledge, W. Va., 79 S. E. 1010.

34.——Delivery.—The placing of a deed in the grantee's hands is not a delivery, if the grantor did not intend that title should then pass and that he should lose control of the deed, and would not be effectual for that purpose if he continued to exercise actual ownership, treating the property as his own.—Kavanaugh v. Kavanaugh, Ill., 103 N. E. 65.

35. **Divorce**—Injunction.—Where, pending divorce suit, husband was enjoined from selling land, and by final decree receiver was appointed to apply rent to the payment of alimony, mortgage by husband and sale by the mortgagee under a power of sale held not in violation of the injunction.—Gobble v. Orrell, N. C., 79 S. E. 957.

36.——Separate Domicile.—A wife, whose husband by his misconduct has rendered life with him unbearable, may acquire a separate domicile based on which she may institute a divorce suit.—Miller v. Miller, Ore., 136 Pac. 15.

37. **Eminent Domain**—Adjacent Lands.—Where a railroad company condemns lands for shop grounds and terminal facilities, no allowance can be made as damages for adjacent lands not taken, unless such lands are reduced in value by the appropriation and use of the land taken.—Smith v. Missouri Pac. Ry Co., Kan., 136 Pac. 253.

38.——Diversion to Private Use.—Rights acquired by eminent domain cannot be diverted to private uses inconsistent with the purpose of the grant.—Hohl v. Iowa Cent. Ry. Co., Iowa, 143 N. W. 850.

39.——Prospective Profits.—Prospective profits from the use of water power for the development of electricity are too remote to be elements of the damages in condemnation proceedings to remove a mildam, where there is no present intent to make such development.—Maynard v. Nemaha Valley Drainage Dist. No. 2, Neb., 143 N. W. 927.

40. **Equity** — Jurisdiction in Personam.—Where a court of equity has jurisdiction over the person of defendant, it does not deprive it of jurisdiction to entertain the case that the res of the controversy is beyond the territorial jurisdiction of the court.—Kane & E. R. Co. v. Pittsburgh & W. R. Co., Pa., 88 Atl. 793.

41. **Evidence**—Admissions.—A plain concession, made in an offer of compromise, and not stated merely hypothetically to buy peace, is admissible in evidence as an admission.—Lovett v. West Virginia Central Gas Co., W. Va., 79 S. E. 1007.

42.——Habits of Animals.—Where the habits of animals under different circumstances and conditions were material, witnesses familiar therewith were properly permitted to testify thereto.—Adamson v. Harper, Iowa, 143 N. W. 844.

43.——Judicial Notice.—Judicial notice will be taken of the custom of using checks in the transaction of business of any magnitude.—Rohrbach v. Hamill, Iowa, 143 N. W. 872.

44.——Official Survey.—An official survey, map, or plat of a dedicated street cannot be contradicted, impeached, or invalidated by parol or other extrinsic evidence unless there is a doubt as to its true location, etc.—Olson Land Co. v. City of Seattle, Wash., 136 Pac. 118.

45.——Photographs.—In a passenger's action for injuries from a train wreck, photographs of the wreck taken on the day of the accident while the conditions remained unchanged were properly admitted in evidence.—St. Louis & S. F. Ry. Co. v. Nichols, Okla., 136 Pac. 159.

46. **Executors and Administrators**—Personal Liability.—An administrator employing a broker to sell land of the estate is personally liable for the commission, no statute authorizing such expenditure, so that he cannot bind the estate therefor.—McFarland v. Howell, Iowa, 143 N. W. 860.

47.——Proceeding in Rem.—A proceeding for administration on the estate of a decedent, if not strictly, is in the nature of one in rem; the res being the estate of the decedent and the only identification of it being the name of the deceased as set forth in the petition.—Anderson v. Qualey, Mass., 103 N. E. 90.

48. **Frauds, Statute of**—Pleadings.—The statute of frauds must be pleaded, and, if not, cannot be taken advantage of.—Millholland v. Payne, 143 N. Y. Supp. 1090.

49. **Fraudulent Conveyances**—Attachment.—If a conveyance by a nonresident debtor is fraudulent as to creditors, the land may be seized by them under attachment as a basis of an action against such nonresident.—Spokane Merchants' Ass'n v. Chittick, Minn., 143 N. W. 915.

50. **Gifts**—Sufficiency in Law.—Where deceased, after being practically told that he could not recover, handed plaintiff, his best friend, two unindorsed drafts, teling him that whatever happened they were for him, there was a complete gift causa mortis.—Baker v. Moran, Ore., 136 Pac. 30.

51. **Habeas Corpus**—Legality of Imprisonment.—The legality of imprisonment depends, not upon the mittimus, but upon the judgment: and hence a person imprisoned under a legal sentence cannot obtain his discharge because of error in the mittimus.—Ex parte De Vore, N. M., 136 Pa. 47.

52.——Extradition.—In extradition proceedings, the governor determines in the first instance whether the demand is in compliance with the law, and whether the person whose return is sought is a fugitive from justice; but his decision is subject to review by habeas corpus.—Ex parte Owen, Okla., 136 Pac. 197.

53. **Homicide**—Abortion.—Although an instrument is used with the assent of the woman to procure an abortion, yet, where death results the common law will imply malice and hold the person so using such instrument guilty of murder, regardless of whether she was pregnant with a quick child or with a vitalized embryo.—State v. Harris, Kan., 136 Pac. 264.

54. **Homestead**—Exchange of Property.—Where there was no fraud in the purchase of stock of goods, the owner could exchange them for a farm and claim it as a homestead, whether or not his purpose was to defeat his creditors.—Littleton v. Carruthers-Jones Shoe Co., Ark., 160 S. W. 397.

55. **Husband and Wife**—Abandonment.—In order to constitute wife abandonment, a husband's desertion must be willful, without the wife's consent, and it must also appear that he has failed to provide adequate support for her.—State v. Smith, N. C., 79 S. E. 979.

56. **Indemnity**—Burden of Proof.—Where plaintiff sues as beneficial obligee on a bond of indemnity, he must prove that he had an interest in the performance of the duty and that the duty was imposed either for his sole benefit or jointly for the benefit of himself and others.—Clark v. Nickell, W. Va., 79 S. E. 1020.

57. **Indictment and Information**—Election.—Under an information charging an assault, an assault with a deadly weapon with intent to commit bodily injury, and an assault with intent to murder, where it appeared that the different counts were not distinct offenses, but related to a single assault charged to have been committed in different ways, the state was not required to elect upon which count it would proceed.—Rice v. People, Colo., 136 Pac. 74.

58. —**Injunction**—Unconstitutional Law.—The rule that equity cannot enjoin the administration of criminal justice, will not preclude enjoining the State Railroad Commission from enforcing the "Full Crew Act" if such act were unconstitutional.—Pennsylvania R. Co. v. Ewing, Pa., 88 Atl. 775.

59. **Insurance**—Construction of Policy.—An ambiguous insurance contract will be strictly construed against the company and so as to sustain rather than defeat its purpose, if that can fairly be done.—Indiana Life Endowment Co. v. Reed, Ind., 103 N. E. 77.

60.——Notice.—Notice to a soliciting agent of a life insurance company of the impaired physical condition of an applicant, rendering him noninsurable, was not notice to the insurer.—Gorman v. Metropolitan Life Ins. Co., 143 N. Y. Supp. 1063.

61.——Notice of Accident.—A delay of 10 months in giving an accident insurance company notice of an accident is unreasonable per se, under a clause of the policy requiring notice to be given as soon as may be reasonably possible.—Hefner v. Fidelity & Casualty Co. of New York, Tex., 160 S. W. 330.

62. **Interest**—Pendency of Suit.—Though an overdue note bore interest only as damages for nonpayment, none being provided for by its terms, the pendency of trustee process against the maker will not suspend the interest.—Oakes v. Buckman, Vt., 88 Atl. 736.

63. **Judgment**—Faith and Credit Clause.—A money judgment by confession rendered in another state without a suit against the defendant having been filed, as was permitted by the laws of that state, held sufficient as a judgment to which full faith and credit must be given.—Tourtelot v. Booker, Tex., 160 S. W. 293.

64.——Jurisdiction.—A garnishment proceeding gives the court jurisdiction over the property subject thereto, such as will support a judgment subjecting the property to the payment of plaintiff's claim, entered on service by publication, where defendant does not personally appear.—State v. Circuit Court of Gregory County, S. D., 143 N. W. 892.

65.——Opening Default.—While the granting or denying of a motion to open a default on the ground of inadvertence or excusable neglect is within the discretion of the trial court, it is a legal discretion to be exercised liberally in the interest of justice.—Esden v. May, Nev., 135 Pac. 1185.

66.——Res Judicata.—In an action to recover for injuries from the explosion of defendant's powder mill, where plaintiff counted on defendant's maintenance of a public nuisance, plaintiff's rights cannot be affected by the judgment in a suit by the Attorney General on the relation of property owners in the vicinity to have the will adjudged a public nuisance.—Schmitzer v. Excelsior Powder Mfg. Co., Mo., 160 S. W. 282.

67. **Landlord and Tenant**—Re-entry.—A landlord, by re-entering upon the lessee's default in rent and taking control of the property, canceled the lease so as to entitle the lessee to a deposit made to secure performance of the lease, whether the deposit was intended as liquidated damages or a penalty; the landlord not being entitled to retake possession and also resort to the deposit made to insure performance.—Wilson v. Agnew, Colo., 136 Pac. 96.

68.——Surrender of Possession.—A tenant cannot, by voluntarily surrendering possession of the premises, evict himself.—Symes Investing Co. v. Wheelock, Colo., 136 Pac. 65.

67. **Libel and Slander**—Criminal Slander.—To charge a white man with being a negro is calculated to bring his good name or character into disrepute and constitutes slander.—Morris v. State, Ark., 160 S. W. 387.

70. **Limitation of Actions**—Partial Payment.—For a partial payment to take a case out of the statute of limitations, the payment must have been made under circumstances indicating an intention by the debtor to recognize the existence of a debt.—In re Sutton's Estate, 143 N. Y. Supp. 1072.

71. **Master and Servant**—Assumption of Risk.—The doctrine of assumed risk involves the united elements of knowledge of the defects or condition and appreciation of danger.—Breen v. Iowa Cent. Ry. Co., Iowa, 143 N. W. 846.

72.——Contributory Negligence.—Where a mine employe was injured from a collision between trains operated by the employer while riding on a loaded coal car with his feet hanging over in violation of the employer's rules and of the statute, he was guilty of contributory negligence barring recovery.—Dugan v. Susquehanna Coal Co., Pa., 88 Atl. 787.

73.——Employment.—A hiring at the rate of so much a year, without specifying any definite time of employment, is a hiring at will, which may be terminated at any time by either party.—Felber v. Home Silk Mills, 143 N. Y. Supp. 1014.

74.——Wrongful Discharge.—In an action for the wrongful discharge of an employe, letters written by plaintiff to his superior officer relating to defendant's business, charging the officer with repudiating obligations, and stating that the officer's letter to plaintiff was insolent, and that plaintiff was astonished at his threat of loss of position to force compliance with the officer's demands, held admissible in evidence.—Martindale v. B. F. Cummins Co., 143 N. Y. Supp. 1100.

75. **Money Received**—Equity.—Where defendant, who contracted with a city to construct a pipe line and employed A. to do the work, deducted from the wages of the laborers employed by A. a sufficient amount to pay for the supplies furnished by plaintiff in maintaining the men, defendant in equity and good conscience should pay plaintiff for such supplies, under the equitable doctrine of liability for money had and received.—Baker City Mercantile Co. v. Idaho Glazed Cement Pipe Co., Ore., 136 Pac. 23.

76. **Mortgages**—Equity of Redemption.—One who merely purchases the equity of redemption, buying the land merely subject to the mortgage, does not become personally liable for the mortgage debt.—Lamka v. Donnelly, Iowa, 143 N. W. 869.

77.——Estoppel.—A mortgagor held not entitled to prevent foreclosure by attacking the validity of a prior mortgage, paid off out of the proceeds of the one being foreclosed, on the ground of the illegality of its consideration.—Quigley v. Wolf, Mich., 143 N. W. 882.

78. **Names**—Idem Sonans.—The name "Eranen" cannot be said, as matter of law, to be idem sonans with "Eronen," particularly as the former name would not be recognized as a Finish name, as the latter is.—Anderson v. Qualey, Mass., 103 N. E. 90.

79. **Partnership**—Contract.—To constitute a partnership contract, competency of the parties, consideration, the subject-matter, and the meeting of the minds of the parties are essential elements, as in case of other contracts.—Rush v. First Nat. Bank, Tex., 160 S. W. 319.

80. **Payment**—Check.—While a check is only a conditional payment of the debt for which it is given, and the creditor may still recover if it is dishonored, in the absence of an agreement that it shall constitute an absolute payment, such an agreement need not be in express words or writing, but may be shown by the circumstances and conduct of the parties.—Rohrbach v. Hammill, Iowa, 143 N. W. 872.

81 **Principal and Agent**—Ratification.—A person who voluntarily accepts the proceeds of an act done by one assuming without authority to be his agent, ratifies the act.—Chicago, R. I. & P. Ry. Co. v. Newburn, Okla., 136 Pac. 174.

82. **Principal and Surety**—Burden of Proof.—The burden is upon a surety, claiming release by an extension, to show that the extension was made without his consent.—State Bank of Isanti v. Mutual Telephone Co., Minn., 143 N. W. 912.

83. **Railroads**—Signals.—Where a railroad company customarily gives signals or keeps a flagman at a crossing, and such practice is notorious, its failure to do so may be considered in determining the question of defendant's negligence.—Midland Valley R. Co. v. Shores, Okla., 136 Pac. 157.

84. **Release**—False Representations.—A release of damages for personal injuries obtained while the injured person is suffering from such nervous shock that he does not understand its purport or obtained by false representations of a claim agent is not binding.—St. Louis & S. F. Ry. Co. v. Nichols, Okla., 136 Pac. 159.

85. **Removal of Causes**—Employers' Liability Act.—A case arising under Employer's Liability Act, brought in a state court of competent jurisdiction, is not removable to a federal court, though it would be otherwise removable.—Patton v. Cincinnati, N. O. & T. P. Ry. U. S. D. C., 208 Fed. 29.

86. **Robbery**—Gambling.—If the party losing at cards voluntarily delivers the money lost to the winner's actual possession, the winner owns the money, so that the forcible taking of it from his possession may constitute robbery.—Coker v. State, Tex., 160 S. W. 366.

87. **Sales**—Delivery to Carrier.—Where defendant ordered a suit of clothes from plaintiff and telephoned him to ship them to a certain point, without designating any carrier, defendant is liable for the price of goods upon their loss in route, under the general rule of law, as well as under Sales Law, § 127, subd. 1, making delivery to a carrier, whether named by the buyer or not, a delivery to the buyer.—Schanz v. Bramwell, 143 N. Y. Supp. 1057.

88.——Measure of Damages.—A buyer who rejected goods of defective quality held entitled to recover the difference between the contract price and market value, and also the part of the price paid.—First Church of Christ Scientist v. Southern Seating & Cabinet Co., Wash., 136 Pac. 127.

89.——Purchaser.—Buyer of stock of goods, including goods ordered, but not yet received, who subsequently received them and converted them to his own use without notifying the seller thereof of the sale of the business, held liable for their price.—Littleton v. Carruthers-Jones Shoe Co., Ark., 160 S. W. 397.

90.——Waiver of Lien.—Where a seller makes a written contract of conditional sale limiting the security reserved to a specified sum, he thereby waives a right to a lien for any further or other sum.—Pickford v. Borland, Wash., 136 Pac. 128.

91. **Trusts**—Employment of Counsel.—A trustee has power to employ counsel to assist in the management of the trust, and to burden the trust estate with a lien for counsel's services.—Dolph v. Cincinnati, B. & C. R. Co., Ind., 103 N. E. 13.

92. **Waters and Water Courses**—Lawful Appropriation.—A riparian proprietor may make any reasonable use of the water of a stream, in connection with his riparian estate and for lawful purposes, within the watershed, provided he leaves the current diminished by no more than is reasonable, having regard for the like right of lower owners.—Stratton v. Mt. Hermon Boys' School, Mass., 103 N. E. 87.

93. **Wills**—Construction.—Where an interest in fee is given in one clause of a will, it cannot be diminished by subsequent vague or general expressions of doubtful import, or by repugnant inferences deducible therefrom.—Irvine v. Irvine, Ore., 136 Pac. 18.

94.——Estoppel.—Representations by the authorities of an abbey that deceased, dying at the abbey, had made over his property to it and had left no will will not estop the authorities from claiming that the will was executed, where such representations were not believed by the heirs.—Wendl v. Fuerst, Ore., 136 Pac. 1.

95.——Testamentary Capacity.—Instructions, that testator is incapable of making a will if his mental condition is such that he does not comprehend his "just" relations to the natural objects of his bounty, and that the will is invalid unless testator is capable of knowing whom he is "depriving" of his property, held erroneous as authorizing the jury to determine whether the disposition was just and proper.—Brainerd v. Brainerd, Ill., 103 N. E. 45.

96.——Vested Interest.—A bequest to a minor of one-half of the income from certain real property, the same to be deposited in a bank, and there remain until the minor arrived at the age of 21 years, held to create a valid vested interest at the time of testatrix's death, and not objectionable as a contingent devise.—In re Budd's Estate, Cal., 135 Pac. 1131.